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12
13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 Cung Le, Nathan Quarry, Jon Fitch, Brandon
16 Vera, Luis Javier Vazquez, and Kyle
Kingsbury, on behalf of themselves and all
17 others similarly situated,

18 Plaintiffs,

19 v.

20 Zuffa, LLC, d/b/a Ultimate Fighting
21 Championship and UFC,

22 Defendant.

No.: 2:15-cv-01045-RFB-(BNW)

**DEFENDANT ZUFFA, LLC'S
MOTION TO CONSOLIDATE
BRIEFING AND AMEND
SCHEDULING ORDER**

(First Request)

1 In light of the November 1, 2023 Order (ECF No. 894) setting a hearing on November 17,
 2 2023, for Defendant Zuffa, LLC's Motion to Reopen Discovery (ECF No. 884), Zuffa hereby
 3 requests that the Court amend the schedule for briefing that motion, as well as for Defendant's
 4 Motion to Treat Fact Evidence Produced in *Johnson* Litigation as if it Was Also Produced in *Le*
 5 Litigation (ECF No. 885) ("Motion for Cross-Use of Discovery"), and to consolidate that briefing
 6 so it may be completed sufficiently in advance of the hearing. Zuffa makes this motion pursuant
 7 to Federal Rule of Civil Procedure 6(b) and Local Rules IA 6-1 and 26-3.

8 Under the existing scheduling order, briefing on Zuffa's Motion to Reopen Discovery will
 9 not be complete before the November 17, 2023 hearing on that motion. The current schedule sets
 10 October 24, November 21, and December 19, 2023, as the deadlines for Zuffa's opening brief,
 11 Plaintiffs' opposition, and Zuffa's reply, respectively. *See* Aug. 21, 2023 Hr'g Tr. at 30-31, ECF
 12 No. 846; ECF No. 847. Zuffa complied with that schedule by submitting an opening brief on
 13 October 24 that explains why it would be reversible error not to reopen discovery to explore
 14 "material" developments that have occurred since mid-2017. ECF No. 884 at 1, 8-16 (citing *City*
 15 *of Pomona v. SQM N. Am. Corp.*, 886 F.3d 1060 (9th Cir. 2017)).

16 The Court also previously set a stipulated schedule for briefing on the parties' dispute
 17 regarding whether discovery taken in *Johnson v. Zuffa*, No. 21-cv-01189 (D. Nev.) (the "*Johnson*
 18 Litigation") may be treated as if also taken in this case, and vice versa. *See* ECF No. 870. The
 19 current scheduling order sets October 26, November 9, and November 16, 2023, as the deadline
 20 for Zuffa's opening brief, Plaintiffs' opposition, and Zuffa's reply, respectively.¹ Zuffa filed its
 21 opening brief in compliance with that schedule, which explained that, pursuant to Ninth Circuit
 22 policy that "strongly favors access to discovery materials to meet the needs of parties engaged in
 23 collateral litigation," factual evidence discovered in the *Johnson* Litigation should be treated as if
 24 also produced in this case. *See* ECF No. 885, at 5-10 (quoting *Foltz v. State Farm Mut. Auto Ins.*
 25 *Co.*, 331 F.3d 1122, 1131 (9th Cir. 2003)).

27 ¹ The parties agreed that each of Zuffa's opening brief and Plaintiffs' opposition would be
 28 no more than 10 pages, and that Zuffa's reply would be no more than 5 pages.

On November 1, 2023, the Court *sua sponte* set a hearing on Zuffa’s Motion to Reopen Discovery for November 17, 2023. ECF No. 894. Because that hearing date falls before the scheduled completion of Zuffa’s Motion to Reopen Discovery, the parties met and conferred about proposing a revised briefing schedule. The parties agreed that, because both of these motions relate to what discovery will be available in this case, the briefing on Zuffa’s Motion to Reopen Discovery and its Motion for Cross-Use of Discovery could be combined. Decl. of Jessica E. Phillips in Supp. of Zuffa’s Mot. to Consolidate Briefing and Amend Scheduling Order (“Phillips Decl.”) at ¶ 8. But the parties could not reach agreement on a revised schedule for that consolidated briefing. Phillips Decl. at ¶ 9.

Zuffa contends that, because of the importance of the issues involved, including Zuffa’s due process rights at trial, briefing on these motions should be completed with adequate time for both (1) Zuffa to respond to Plaintiffs’ arguments; and (2) the Court to consider the parties’ positions in advance of the November 17 hearing. Accordingly, Zuffa proposed a schedule requiring Plaintiffs’ consolidated opposition brief to be filed no later than November 10, and Zuffa’s consolidated reply brief to be filed no later than November 15, two days before the hearing. Phillips Decl. at ¶ 11.

Plaintiffs, by contrast, sought a schedule allowing them to file their consolidated opposition brief of 30 pages on November 13, with Zuffa’s consolidated reply due only three days later, on the eve of the hearing. Phillips Decl. at ¶ 10. During the parties’ conference, Plaintiffs took the position that if Zuffa did not agree to their proposed schedule, Plaintiffs would delay the filing of their opposition to the Motion to Reopen Discovery until November 16—the day before the hearing—denying Zuffa an opportunity to reply to that brief. Phillips Decl. at ¶ 12.

Because, regrettably, the parties could not come to an agreement on a revised briefing schedule, Zuffa respectfully moves the Court to order consolidated briefing on Zuffa’s two motions and to amend the briefing schedule so that Plaintiffs’ 30-page consolidated opposition brief is due on November 10, and Zuffa’s 15-page consolidated reply is due on November 15, 2023. Good cause exists to consolidate the briefing, and both parties agree that is appropriate (and

agree to the proposed page limitations), because both motions relate to the overlapping issue of what evidence will be available in this case, including evidence of market conditions that have changed after the close of fact discovery in mid-2017. Good cause also exists to amend the briefing schedule and adopt Zuffa's proposed timeline because the current schedule does not result in a fully briefed Motion to Reopen Discovery prior to the hearing on that motion, Zuffa's alternative timeline affords both sides adequate time to respond to the other's arguments, and for the Court to consider those arguments prior to the hearing date. By contrast, Plaintiffs' alternatives give Zuffa no meaningful opportunity to respond, allow no sufficient opportunity for the Court to consider the parties' positions prior to the hearing, or suffer both deficiencies. Zuffa's proposed schedule is also fair to Plaintiffs because it gives Plaintiffs more time to respond to both of Zuffa's motions than they would receive under the local rules, *see* L.R. 7-2(b), as shown below:

Brief	Deadline Under Default Local Rules	Zuffa's Proposal	Plaintiffs' Proposal 1	Plaintiffs' Proposal 2
Pls.' Opp'n to Motion to Reopen Discovery	November 7	November 10 (consolidated)	November 13 (consolidated)	November 16
Pls.' Opp'n to Motion for Cross-Use of Discovery	November 9	November 10 (consolidated)	November 13 (consolidated)	November 9
Def.'s Reply in Support of Motion to Reopen Discovery	November 14	November 15 (consolidated)	November 16 (consolidated)	None
Def.'s Reply in Support of Motion for Cross-Use of Discovery	November 16	November 15 (consolidated)	November 16 (consolidated)	November 16

This is Zuffa's first motion to consolidate and amend the schedule for these briefs.

1 Dated: November 6, 2023

Respectfully Submitted,
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP

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3
4 By /s/ Jessica E. Phillips

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14 *Ultimate Fighting Championship and UFC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Consolidate Briefing and Amend Scheduling Order was served on November 6, 2023, via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

Dated: November 6, 2023

/s/ Jessica E. Phillips
Jessica E. Phillips